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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,386	04/28/2000	Michael Wayne Brown	AUS000035USI	3329

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EXAMINER

VON BUHR, MARIA N

ART UNIT

PAPER NUMBER

2125

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/560,386

Applicant(s)

BROWN ET AL.

Examiner

Maria N. Von Buhr

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30,32-62,64-87 and 89-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30,32-62,64-87 and 89-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Examiner acknowledges receipt of Applicant's response to the previous Office action, received 05 August 2004; which amends the specification, cancels claims 31, 63 and 88, and amends claims 1, 10, 11, 21, 32, 33, 42, 43, 53, 64, 65, 67, 68, 78 and 89. Claims 1-30, 32-62, 64-87 and 89-102 remain pending in this application.

2. In response to Applicant's amendment, the objection to the specification, objection to certain claims, and previously presented 35 U.S.C. §112, second paragraph, rejection of various claims, are deemed to have been overcome and are, therefore, withdrawn.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claim 82 is newly rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, because there is no clear and proper antecedent basis for "said current medication usage" (note: it appears that the dependency of the claim may be in error).

5. In response to Applicant's amendment and remarks, concerning the 35 U.S.C. §102(a) and (e) rejection of claims 89 and 96, as being clearly anticipated by Del Giorgio (U.S. Patent No. 5,899,502), Examiner notes the following:

a. Applicant's argument, that Del Giorgio does not teach the instantly claimed "filtering said plurality of electronic recipes at said electronic cookbook controller according to specifications for a particular household, such that only a selection of said plurality of electronic recipes that are preparable according to said specifications for said particular household are accessible at said electronic cookbook controller," is not persuasive.

b. As presented in the previous Office action, Del Giorgio discloses a "method of making an individualized restaurant menu for a customer desirous of avoiding ingestion of customer-selected ingredients. A database is loaded into a computer. Names of all the ingredients used by the restaurant are loaded into the database. A plurality of recipes are loaded into the database. Each recipe comprises ingredients selected from the ingredients, named in the database. The customer selects any ingredients the customer wishes to avoid. The customer's name is entered into the database in association with the names

of ingredients which the customer has selected as to-be-avoided. The database of recipes is automatically searched for the ingredients-to-be-avoided. All available recipes not containing ingredients-to-be-avoided are printed on a menu, customized for the customer" (see the abstract), "particularly for a customer desirous of avoiding ingestion of customer-selected ingredients ... persons who are allergic to certain ingredients may suffer adverse reactions, including in extreme cases anaphylactic shock and death, as a result of ingesting such ingredients ... others have been advised by their doctors to avoid such things as cholesterol or sodium" (see at least, col. 1). Del Giorgio further teaches basing selection upon availability of ingredients (see at least, col. 5, lines 20-24), and providing for remote access to the database (see at least, col. 2, lines 15-17).

c. Accordingly, Del Giorgio clearly teaches searching, through a database of all possible choices, for only those meal selections which satisfy a user's inputted specifications/criteria. This searching is the same as Applicant's instantly claimed "filtering." Furthermore, Del Giorgio teaches generating a "menu consisting only of selected servings in which the offending selected ingredient-to-be-avoided are absent" (col. 1, lines 38-45). In other words, only those menu items which meet the user's selected criteria are accessible/available for further selection. Hence, the instant claim language is deemed to "read-on" the teachings of Del Giorgio.

d. Hence, claims 89 and 96 stand rejected under 35 U.S.C. §102(a) and (e), as being clearly anticipated by Del Giorgio (U.S. Patent No. 5,899,502).

6. Applicant has provided no further arguments regarding dependent claims 90-95 and 97-102. Therefore, the rejections presented in the previous Office action stand, and are reproduced here for Applicant's convenience.

7. Claims 91-93, 95 and 97-99 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502), as applied to claims 89 and 96 above, and further in view of Neuhaus (U.S. Patent No. 5,832,446).

a. As per claims 91-93, 95 and 97, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for networked communication using servers, as instantly claimed. In this regard, Neuhaus teaches the well-known nature of such communication (see at least, the abstract; col. 4, lines 10-30). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention

was made, to modify the system of Del Giorno to utilize such communication, because Neuhaus teaches a resultant increase in versatility.

b. As per claims 98 and 99, although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specifically provide for using information pertaining to lifetime of available ingredients, kitchen equipment availability, meal preparation time constraints, budgeting, and using alternate ingredients to modify recipes, respectively, as instantly claimed. In this regard, Neuhaus teaches each of these features in a menu preparation environment (see at least, the abstract; col. 2, lines 34-57; col. 3, lines 4-35; col. 5, lines 45-47; col. 6, lines 62-66). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to utilize such features in the system of Del Giorno, because Neuhaus teaches the benefit of saving money as a result, by avoiding purchasing unnecessary ingredients and/or planning meals which cannot be prepared because of the lack of necessary equipment and/or ingredients.

8. Claim 94 stands rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502), as applied to claim 89 above, and further in view of Diaz et al. (U.S. Patent No. 5,890,128).

a. Although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specifically provide for portability and/or use of personal devices, respectively, as instantly claimed. In this regard, Diaz et al. teach the well-known nature of such portability and personal device (see at least, the abstract; cols. 1-4). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorno to utilize such capability, because Diaz et al. teach a resultant increase in convenience for the user.

9. Claims 90 and 101 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502), as applied to claims 89 and 96 above, and further in view of Ecer (U.S. Patent No. 5,412,564).

a. Although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specify taking into account the number of people a meal is being planned for, nor controlling the manner in which information is presented to a user, nor the updating of stored information, respectively, as instantly claimed. In this regard, Ecer teaches

such features in a diet planning environment (see, at least, the abstract; col. 1, lines 51-60; col. 3, lines 38-39; col. 3, line 60 - col. 4, line 2). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorno to utilize such features, because Ecer teaches the benefit providing versatility the menu planning.

10. Claims 100 and 102 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502), as applied to claim 96 above, and further in view of Halverson (U.S. Patent No. 6,301,564).

a. Although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specify event planning and scheduling, as instantly claimed. In this regard, Halverson teaches using menu planning to organize and schedule “events” (see, at least, the abstract; col. 1, lines 25-50). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to utilize the system of Del Giorno in such an event planning environment, because Halverson teaches the additional flexibility and versatility of providing a particular dining experience.

11. The 35 U.S.C. §102(a) and (e) rejection of claims 1, 10, 13, 14, 18, 33, 42, 45, 46, 50, 65, 67, 70, 71 and 75, as being clearly anticipated by Del Giorno (U.S. Patent No. 5,899,502), is deemed to be moot, in view of the incorporation of the limitations of dependent claims 31, 63 and 88 into independent claims 1, 33 and 65, respectively.

12. In this regard, now cancelled claims 31, 63 and 88, were previously rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502) in view of Neuhaus (U.S. Patent No. 5,832,446).

a. As presented in the previous Office action, as per claims 10, 13, 14, 18, 42, 45, 46, 50, 67, 70, 71 and 75, Del Giorno discloses a “method of making an individualized restaurant menu for a customer desirous of avoiding ingestion of customer-selected ingredients. A database is loaded into a computer. Names of all the ingredients used by the restaurant are loaded into the database. A plurality of recipes are loaded into the database. Each recipe comprises ingredients selected from the ingredients, named in the database. The customer selects any ingredients the customer wishes to avoid. The customer's name is entered into the database in association with the names of ingredients which the customer has selected as to-be-avoided. The database of recipes is automatically searched for the

ingredients-to-be-avoided. All available recipes not containing ingredients-to-be-avoided are printed on a menu, customized for the customer” (see the abstract), “particularly for a customer desirous of avoiding ingestion of customer-selected ingredients ... persons who are allergic to certain ingredients may suffer adverse reactions, including in extreme cases anaphylactic shock and death, as a result of ingesting such ingredients ... others have been advised by their doctors to avoid such things as cholesterol or sodium” (see at least, col. 1). Del Giorgio further teaches basing selection upon availability of ingredients (see at least, col. 5, lines 20-24), and providing for remote access to the database (see at least, col. 2, lines 15-17).

b. As presented in the previous Office action, as per now cancelled claims 31, 63 and 88, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for using information pertaining to lifetime of available ingredients, kitchen equipment availability, meal preparation time constraints, budgeting, and using alternate ingredients to modify recipes, respectively, as instantly claimed. In this regard, Neuhaus teaches each of these features in a menu preparation environment (see at least, the abstract; col. 2, lines 34-57; col. 3, lines 4-35; col. 5, lines 45-47; col. 6, lines 62-66). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to utilize such features in the system of Del Giorgio, because Neuhaus teaches the benefit of saving money as a result, by avoiding purchasing unnecessary ingredients and/or planning meals which cannot be prepared because of the lack of necessary equipment and/or ingredients.

c. Applicant argues, at page 29 of the instant response, that neither Del Giorgio nor Neuhaus teach the instantly claimed “updating a kitchen budget according to cost of cooking related supplies utilized for said meal plan selections in response to receiving a meal plan selection from among said at least one meal plan.” Examiner agrees that Del Giorgio does not teach this instantly claimed feature. Also, although Neuhaus does teach that “dishes can be searched according to their ... food preparation costs” (see col. 3, lines 25-29, as noted above), such teaching is now deemed not to be commensurate in scope with the instantly claimed feature. Hence, Applicant’s argument is deemed to be persuasive.

d. However, Applicant’s attention is directed to the newly cited reference of Howard et al. (U.S. Patent No. 6,513,017), which teaches a “system and method for household grocery management,” wherein a meal preparation/cookbook application is integrated with a grocery inventory application, including integrating the cookbook/recipe selection function with a budgeting function (see at least, the abstract; Figures 1, 3 and 4, with accompanying text). It would have been obvious, to one having

ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorgio to include such a kitchen budgeting function, since it is extremely well-known for households to limit their meal preparation based upon the finances of the household, and because Howard et al. teach a resultant increase in efficiency of managing groceries (i.e. meal/menu preparation ingredients) in a household.

e. Accordingly, amended claims 1, 33 and 65, and dependent claims 10, 13, 14, 18, 42, 45, 46, 50, 67, 70, 71 and 75, now stand rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502) in view of Howard et al. (U.S. Patent No. 6,513,017).

13. Applicant has provided no further arguments regarding dependent claims 2-30, 32, 34-62, 64 and 66-87. Therefore, the previously presented rejections stand, as modified by the newly cited reference to Howard et al., as follows.

14. Claims 2, 5, 15-17, 20, 22, 23, 34, 37, 47-49, 52, 54, 55, 66, 72-74, 77, 79 and 80 are now rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502) in view of Howard et al. (U.S. Patent No. 6,513,017), as applied to claims 1, 33 and 65 above, and further in view of Neuhaus (U.S. Patent No. 5,832,446).

a. As per claims 2, 5, 34, 37 and 66, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for networked communication using servers, as instantly claimed. In this regard, Neuhaus teaches the well-known nature of such communication (see at least, the abstract; col. 4, lines 10-30). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorgio to utilize such communication, because Neuhaus teaches a resultant increase in versatility.

b. As per claims 15-17, 20, 22, 23, 47-49, 52, 54, 55, 72-74, 77, 79 and 80, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for using information pertaining to lifetime of available ingredients, kitchen equipment availability, meal preparation time constraints, budgeting, and using alternate ingredients to modify recipes, respectively, as instantly claimed. In this regard, Neuhaus teaches each of these features in a menu preparation environment (see at least, the abstract; col. 2, lines 34-57; col. 3, lines 4-35; col. 5, lines 45-47; col. 6, lines 62-66). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to utilize such features in the

system of Del Giorgio, because Neuhaus teaches the benefit of saving money as a result, by avoiding purchasing unnecessary ingredients and/or planning meals which cannot be prepared because of the lack of necessary equipment and/or ingredients.

15. Claims 3, 4, 6-9, 35, 36 and 38-41 are rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502) in view of Howard et al. (U.S. Patent No. 6,513,017), as applied to claims 1 and 33 above, and further in view of Diaz et al. (U.S. Patent No. 5,890,128).

a. As per claims 3, 4, 35 and 36, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for portability and/or use of personal devices, respectively, as instantly claimed. In this regard, Diaz et al. teach the well-known nature of such portability and personal device (see at least, the abstract; cols. 1-4). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorgio to utilize such capability, because Diaz et al. teach a resultant increase in convenience for the user.

b. As per claims 6-9 and 38-41, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for taking health plan, intake, exercise and environmental factors into consideration, respectively, as instantly claimed. In this regard, Diaz et al. specifically teach the well-known nature of using electronic devices to monitor such activity (see at least, the abstract; cols. 1-4). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorgio to also take such factors into consideration, because Diaz et al. teach the purpose of such monitoring to be the maintenance of health through dietary management, and the benefit of tailoring such management to individual users, for an increased efficiency and accuracy of dietary management.

16. Claims 11, 12, 21, 26, 27, 32, 43, 44, 53, 58, 59, 64, 68, 69, 78, 83 and 84 are rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502) in view of Howard et al. (U.S. Patent No. 6,513,017), as applied to claims 1, 33 and 65 above, and further in view of Ecer (U.S. Patent No. 5,412,564).

a. Although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specify taking into account the number of people a meal is being planned for, nor controlling the manner in which information is presented to a user,

nor the updating of stored information, respectively, as instantly claimed. In this regard, Ecer teaches such features in a diet planning environment (see at least, the abstract; col. 1, lines 51-60; col. 3, lines 38-39; col. 3, line 60 - col. 4, line 2). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorgio to utilize such features, because Ecer teaches the benefit providing versatility the menu planning.

17. Claims 19, 28-30, 51, 60-62, 76 and 85-87 are rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502) in view of Howard et al. (U.S. Patent No. 6,513,017), as applied to claims 1, 33 and 65 above, and further in view of Halverson (U.S. Patent No. 6,301,564).

a. Although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specify event planning and scheduling, as instantly claimed. In this regard, Halverson teaches using menu planning to organize and schedule “events” (see at least, the abstract; col. 1, lines 25-50). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to utilize the system of Del Giorgio in such an event planning environment, because Halverson teaches the additional flexibility and versatility of providing a particular dining experience.

18. Claims 24, 25, 56, 57, 81 and 82 are rejected under 35 U.S.C. §103(a), as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502) in view of Howard et al. (U.S. Patent No. 6,513,017), as applied to claims 1, 33 and 65 above, and further in view of Szabo (U.S. Patent No. 5,954,640).

a. Although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specify detecting food/medication interactions and alerting the user of any such interactions, as instantly claimed. In this regard, Szabo teaches a “method for proposing and providing nutritional supplementation for a person comprising the steps of receiving personal information, e.g., relating to health and diet, about the person, determining a health model for the person, determining an effect on the health model for at least two nutritional supplements, optimizing a proposed nutritional supplementation for the person based on the personal information about the person and effect for the at least two nutritional supplements, through employment of the health model, and outputting a proposed nutritional supplementation including amounts of at least two nutritional supplements” (see the abstract), wherein an “activity model proposes a benefit of a nutritional supplement, while a toxicity model compels a limitation in dose. The activity and toxicity

models may be combined into an efficacy model. Where the individual models do not explicitly account for interactions with other factors, models, and nutritional supplements, a separate interaction model may be provided to inform the consumer of potential interactions and seek to prevent hazards or inefficiencies, and to determine whether beneficial interactions are present or may be increased, for example by combining magnesium and vitamin D. Another example is the ability of ascorbic acid to degrade nitrosamines, which form from nitrites in foods, for example preserved meats and smoked fish. Thus, the nutritional supplementation optimization may propose that orange juice, a food, be consumed when lox and bagels are also consumed. Thus, the proposal is not limited to nutritional supplementation with micronutrients alone" (see at least, col. 8, lines 27-45). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to include such an alert in the system of Del Giorno, because Szabo discloses a resultant increase in efficiency and safety of nutritional suggestions to a user.

19. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. Applicant is advised to carefully review the cited art, as evidence of the state of the art, in preparation for responding to this Office action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria N. Von Buhr whose telephone number is 571-272-3755. The examiner can normally be reached on M-F (9am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 571-272-3749. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Maria N. Von Buhr
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